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**FILED**  
AUG 24 1999  
KEVIN E. O'DRIEN, CLERK  
UNITED STATES  
BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA**

In Re:	)	Chapter 11
	)	
BCE WEST, L.P., <i>et al.</i> ,	)	Case Nos. 98-12547
	)	Through 98-12570-ECF-CGC
Debtors.	)	Jointly Administered
	)	
EID # 38-3196719	)	
	)	
	)	<b>ORDER ON NINTH MOTION FOR</b>
	)	<b>AUTHORITY TO SELL REAL</b>
	)	<b>PROPERTY OUTSIDE THE</b>
	)	<b>ORDINARY COURSE OF BUSINESS</b>
	)	<b>FREE AND CLEAR OF LIENS</b>
	)	<b>[DE 1085]</b>
In Re:	)	
	)	
BOSTON CHICKEN, INC.	)	98-12548-ECF-CGC

On August 24, 1999, the Court held a hearing to consider the Ninth Motion for Authority to Sell Real Property Outside the Ordinary Course of Business Free and Clear of Liens (the "Motion") [DE 1085] filed by the Debtors identified in the Motion. At the hearing on the Motion the Court heard proffered testimony and statements of counsel for the Debtors concerning the fairness of consideration received and the best interests of the estates as to those properties with respect to which no competitive bids were received at the hearing. Based on the bids received

1 and the evidence adduced, the Court finds that it has jurisdiction to consider this matter; that  
2 granting the relief requested by the Motion is appropriate; that the Debtors have exercised  
3 appropriate business judgment in pricing and marketing the properties; that the prices received for  
4 the Debtors' property interests are fair, reasonable and in the best interest of the Debtors, their  
5 estates, creditors, and equity interest holders; and that the purchasers of the properties are good  
6 faith purchasers for purposes of 11 U.S.C. § 363(m). Additionally, the terms and conditions for  
7 bidding set forth in the Motion are incorporated as part of the sales transactions and agreed to by  
8 each party submitting bids. This order incorporates those terms and conditions as part of the  
9 Court's findings as to the reasonableness of the sales. In consideration of the foregoing, and due  
10 and proper notice of the Motion having been given, and no objections having been filed to the  
11 Motion, it is accordingly  
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13  
14 **Store # 1437**

15 ORDERED that the Debtor Boston Chicken, Inc. is authorized to sell Boston  
16 Market store number 1437 and any remaining fixtures and equipment in such store, located in  
17 Grand Chute, Wisconsin, to B&B Properties, LLC and its successors and assigns as the successful  
18 bidder for a total cash price of \$320,000, on the terms and conditions set forth in the Motion and  
19 in the Debtors' standard form contract. It is further  
20

21 ORDERED that the sale to B&B Properties, LLC and its successors and assigns  
22 will be free and clear of all liens with any valid prepetition liens attaching to the sale proceeds. It  
23 is further  
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Store # ~~2484~~ 1867

ORDERED that the Debtor Boston Chicken, Inc. is authorized to sell Boston Market store number 1867 and any remaining fixtures and equipment in such store location, located in Midlothian, Virginia, to Zinx Real Estate Holdings and its successors and assigns as the successful bidder for a total price of \$ 685,000, on the terms and conditions set forth in the Motion and in the Debtors' standard form contract. It is further

ORDERED that the sale to Zinx Real Estate Holdings and its successors and assigns will be free and clear of all liens with any valid prepetition liens attaching to the sale proceeds. It is further

~~ORDERED that in the event \_\_\_\_\_ fails to close the transaction, \_\_\_\_\_ and its successors and assigns is approved as the backup bidder for \$ \_\_\_\_\_ on the same terms and conditions. It is further~~

#### General Provisions


ORDERED that upon closing of any sale this Order may be filed or recorded with any appropriate filing or recording agency to memorialize that, without any further act by any party, this Order releases and terminates all security interests, liens, claims and encumbrances that exist or are asserted against any of the property being sold pursuant to this Order; notwithstanding the foregoing, however, any person asserting such a lien, claim or encumbrance shall, promptly upon demand by the Debtor, execute, deliver, file or record, as appropriate, such documents as may be reasonable or necessary to evidence the release and termination of such lien, claim or encumbrance. It is further

1           ORDERED that nothing contained in this Order shall (a) constitute a determination  
2 by the Court of the validity, priority, perfection, or amount of the respective prepetition liens and  
3 security interest asserted by any entity in respect of any of the sales, (b) grant standing to any third  
4 party, including the Committee, to (i) avoid or otherwise challenge the validity, priority,  
5 perfection, or amount of such prepetition liens and security interests and (ii) seek the  
6 disgorgement and recovery of the proceeds of any of the sales from any entity whose prepetition  
7 liens and security interests asserted in respect of such property are avoided pursuant to order of  
8 the Court or (c) prejudice or impair the right of the Committee to seek authority from the Court to  
9 (i) avoid or otherwise challenge the validity, priority, perfection, or amount of such prepetition  
10 liens and security interests and (ii) seek the disgorgement and recovery of the proceeds of any of  
11 the sales from any entity whose prepetition liens and security interests asserted in respect of such  
12 property are avoided pursuant to order of the Court. It is further  
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15           ORDERED that all liens and security interests in the property being sold or  
16 otherwise disposed of hereunder shall attach the proceeds of sale, and, immediately upon receipt  
17 thereof, the Debtors shall pay such proceeds to General Electric Capital Corporation ("GECC"),  
18 as administrative agent for the Debtors' debtor-in-possession lenders, for application to the  
19 outstanding loans to the Debtors pursuant to that certain Debtor in Possession Credit Agreement  
20 between, among other parties, the Debtors and GECC as provided therein. It is further  
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1 ORDERED that notwithstanding the Order for Joint Administration [DE 23], the Clerk is  
2 directed to file a copy of this Order in the docket of each case that appears in the caption of this  
3 Order.

4 Dated: August 24, 1999.

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7 Charles G. Case, II  
United States Bankruptcy Judge.  
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